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CATHY A CATTERSON
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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEFFREY W. BROWN

Plaintiff-Appellant,

v.

ADIDAS USA, INC., aka Adidas American, Inc.; DOES, Various Unknown Parties, to include all parties that supply Adidas with materials and outsold formulations and products,

Defendants-Appellees.

No. 98-56752

D.C. No. CV-95-03866-JFS

MEMORANDUM[1]

Appeal from the United States District Court
for the Southern District of California
Marilyn L. Huff, Chief Judge, Presiding

Submitted December 13, 1999[2]

1 This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R 36-3.

2 The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a) (2): Accordingly, Brown's request for oral argument is denied.

Before:LEAVY, TROTT, and SILVERMAN, Circuit Judges.

Jeffery W. Brown appeals pro se the district court's summary judgement and its denial of his motion for reconsideration in Brown's action alleging that defendants-appellees misappropriated a recipe for the outsole of an athletic shoe. We have jurisdiction under 28 U.S.C. § 1291. We affirm.[3]

Because it was filed more than ten days after the entry of judgement, Brown's motion for reconsideration is properly construed as a Fed: R. Civ. P. 60(b) motion, *see Gould v. Mutual Life Ins. Co. of New York*, 790 F.2d, 772 (9th Cir. 1986), whose denial we review for an abuse of discretion, *see Molloy*, 878 F.2d at 315. Reconsideration under Fed. R. Civ. P. 60(b) is appropriate if the moving party can show: (1) mistake, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud or other misconduct; (4) a void judgment; (5) a satisfied or discharged judgment; or (6) any other reason justifying relief

[3] Brown filed his notice of appeal more than 30 days after the district court entered judgment for defendants-appellees. Because Brown filed his motion for reconsideration more than ten days after the entry of file his notice of appeal. See Fed. R. App. P. (a)(4); Fed. R. Civ. P. 6(a). Consequently, Brown's notice of appeal is untimley as to the summary judgment and timley only as to the district court's denial of Brown's motion for reconsideration. See Molloy v. Wilson, 878 F. 2d313,315 (9th Cir. 1989).

from operation of judgment. Relief under subsection (6) requires a finding of "extraordinary circumstances" McConnell v. MEBA Medical & Benefits plan, 778 F.2d 521, 526 (9th Cir.1985).

As the moving party, Brown has the burden of showing that he is entitled to relief. *See Jones v. Aero/Chem Corp.*, 921 F.2d 875, 878-79 (9th Cir. 1990) (per curiam) (holding that movant under Fed. R. Civ. P. 60(b) subsections (2) and (3), must make significant showing of entitlement to relief); *Straw v. Bowen*, 886 F.2d 1167, 1172 (9th Cir. 1989) (same regarding Fed. R. Civ. P. 60(b) subsections (1) and (6)).

While unclear, the primary bases for Brown's reconsideration motion appear to be subsections (1) (mistake), (2) (newly discovered evidence), and (3) (misconduct). Brown has failed to identify any error committed by the district court, *see Straw*, 866 F.2d at 1172, to explain why "new evidence" accompanying his motion to reconsider could not have been presented earlier, *see Jones*, 921 F.2d at 878, to prove by clear and convincing evidence that summary judgment resulted from misconduct, *see id.* at 878-79, or to identify any other

reason justifying relief under Fed. R. Civ. P.(Becuase Brown has not shown he is entitled to relief under any subsection of Fed. R. Civ. P. 60(b), the district court acted within its discretion when it denied his motion for reconsideration. Brown's motion to file a supplemental brief on appeal is DENIED.

AFFIRMED.